

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: STRYKER LFIT V40)	MDL No. 17-md-2768-IT
FEMORAL HEAD PRODUCTS)	
LIABILITY LITIGATION)	<u>Case No. 1:20-cv-10134</u>
)	
This Document Relates To:)	
)	SHORT FORM
)	COMPLAINT AND
)	JURY DEMAND
)	
)	
DANIEL RUFO and JANE RUFO,)	
)	
PLAINTIFFS,)	
)	
v.)	
)	
HOWMEDICA OSTEONICS CORP.)	
)	
DEFENDANTS.)	
)	

1. Plaintiffs, Daniel Rufo and Jane Rufo, state and bring this civil action in MDL No. 2768, entitled *In Re: Stryker LFIT V40 Femoral Head Products Liability Litigation*. Plaintiffs are filing this Short Form Complaint as permitted by this Court's Amended Case Management Order #2, dated October 23, 2017.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Daniel Rufo, is a resident and citizen of the State of Florida and claims damages as set forth below.

3. Plaintiff's Spouse, Jane Rufo, is a resident and citizen of the State of

Florida, and claims damages as set forth below.

4. Venue of this case is appropriate in the United States District Court, Middle District of Florida. Plaintiff states that but for the Order permitting directly filing into the District of Massachusetts pursuant to Pretrial Order No. 2, Plaintiff would have filed in the United States District Court, Middle District of Florida. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

5. Plaintiff brings this action *[check the applicable designation]*:

 X On behalf of himself;

 In a representative capacity as the of the having been duly appointed as the by the Court of . A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent. *[Cross out if not applicable.]*

FACTUAL ALLEGATIONS

Allegations as to **Left** Implant/Explant Surgery(ies):

6. Plaintiff was implanted with an LFIT Anatomic CoCr V40 Femoral Head on his left hip on or about April 21, 2009 at New England Baptist Hospital in Boston, Massachusetts, by Dr. Robert Miegel.

7. Plaintiff was implanted with the following femoral stem during the April 21, 2009 surgery:

X Accolade TMZF
 Accolade II
 Other (Femoral Stem)

8. Plaintiff had the femoral head at issue explanted on July 29, 2019 at Sarasota Memorial Hospital in Sarasota, Florida by Dr. Edward Stolarski.

ALLEGATIONS AS TO INJURIES

9. (a) Plaintiff claims damages as a result of (check all that are applicable):

 X INJURY TO HERSELF/HIMSELF
 INJURY TO THE PERSON REPRESENTED
 WRONGFUL DEATH
 SURVIVORSHIP ACTION
 X ECONOMIC LOSS

 (b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

 X LOSS OF SERVICES
 X LOSS OF CONSORTIUM

10. Plaintiff has suffered injuries as a result of implantation of the Device at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

11. Plaintiff has suffered injuries as a result of the explantation of the Device at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated

Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

12. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiffs.

13. Plaintiffs could not have known that the injuries he/she suffered were as a result of a defect in the Device at issue until after the date the Device was recalled from the market and the Plaintiffs came to learn of the recall.

14. In addition, Plaintiff could not have known that he was injured by excessive levels of chromium and cobalt until after the date he had his blood drawn and he was advised of the results of said blood-work and the fact that those blood work abnormalities were attributable to a defect in the Device at issue.

CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

15. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

- | | |
|--------------|---|
| <u> X </u> | COUNT I - NEGLIGENCE; |
| <u> X </u> | COUNT II - NEGLIGENCE PER SE; |
| <u> X </u> | COUNT III - STRICT PRODUCTS LIABILITY -
DEFECTIVE DESIGN; |
| <u> X </u> | COUNT IV - STRICT PRODUCTS LIABILITY –
MANUFACTURING DEFECT; |
| <u> X </u> | COUNT V - STRICT PRODUCTS LIABILITY- FAILURE
TO WARN; |
| <u> X </u> | COUNT VI - BREACH OF EXPRESS WARRANTY; |

- X COUNT VII- BREACH OF WARRANTY AS TO
MERCHANTABILITY;
- X COUNT VIII - BREACH OF IMPLIED WARRANTIES;
- X COUNT IX - VIOLATION OF MASSACHUSETTS
CONSUMER PROTECTION ACT
- X COUNT X – VIOLATION OF CONSUMER FRAUD
AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES
UNDER STATE LAW;
- X COUNT XI - NEGLIGENT MISREPRESENTATION
- X COUNT XII - LOSS OF CONSORTIUM
- X COUNT XIII – UNJUST ENRICHMENT
- COUNT XIV – WRONGFUL DEATH
- X COUNT XV- PUNITIVE DAMAGES

In addition to the above, Plaintiffs assert the following additional causes of action
under applicable state law:

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this
action;

3. For an award of attorneys' fees and costs;
4. For prejudgment interest and costs of suit;
5. For restitution and disgorgement of profits; and,
6. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Date: January 23, 2020

Respectfully submitted,

MESHBESHER & SPENCE

/s/ Ashleigh E. Raso

Ashleigh E. Raso (MN #0393353)

Anthony Nemo (MN #221351)

Andrew L. Davick (MN #332719)

1616 Park Avenue South

Minneapolis, MN 55404

(T) 612-339-9121

(F) 612-339-9121

araso@meshbesh.com

tnemo@meshbesh.com

adavick@meshbesh.com

Attorneys for Plaintiff